SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*, *Petitioners*,

v.

WEBB'S CITY, INC., *Respondent*.

MEMORANDUM OF RESPONDENT SUGGESTING THAT THE CAUSE IS MOOT

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January 3, 1964

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Respondent Webb's City, Inc. submits this memorandum to advise the Court of facts beyond the existing record which, in respondent's opinion, render this case moot.

Respondent operates a department store in St. Petersburg, Florida. In December of 1960, Negroes were not served at the store's lunch counter or in its cafeteria. During that month (erroneously stated to be in 1962 in the petition for writ of certiorari), "pickets from the St. Petersburg Branch of the

National Association for the Advancement of Colored People carried placards outside of Webb's City, urging the public not to patronize the store because of its undemocratic refusal to serve Negroes in its cafeteria." (Petition for writ of certiorari, p. 3.) In view of the nature of the picketing and its adverse economic consequences, respondent sought and obtained an injunction which limited petitioners' activities in opposition to the policy of segregation. (See pages 4-7 of respondent's brief in opposition to petition for writ of certiorari.)

While the legality of the injunction was being challenged in Florida appellate courts, respondent (like numerous other business organizations) reviewed its policies. In early 1962, the lunch counter at Webb's City was voluntarily and peacefully desegregated. Not long before the Court granted certiorari herein, the cafeteria was similarly desegregated (wholly independently of this litigation). Negroes now are served, with no discrimination, at both of respondent's eating facilities. Since petitioners' complaint was with the former policy of segregation, and since respondent voluntarily has abandoned its former policy of segregating its eating facilities, there no longer exists any controversy and the cause should be dismissed for mootness.[1] *E.g., Local 8-6, Oil Workers Union, AFL-CIO* v. *Missouri*, 361 U.S. 363 (1960); *Harris* v. *Battle*, 348 U.S. 803 (1954); *Heitmuller* v. *Stokes*, 256 U.S. 359 (1921).

Shortly after learning that the cause had become moot, present counsel for respondent telephoned coun-

[1] Of course, respondent assures the Court that it intends to continue its present policy of integration.

sel for petitioners (on December 26, 1963), to advise the latter of the imminent filing of this memorandum. This was done because of a desire to save petitioners unnecessary effort and expense, and counsel for respondent suggested that the printing of the record be halted to minimize petitioners' costs therefor. However, counsel for petitioners expressed a desire both to have the Court decide this case on the merits and to have the printing of the record completed.[2]

Respondent thus is aware of petitioners' interest in having this Court render an opinion on the merits herein. "But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. * * * This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." *Rice* v. *Sioux City Memorial Park Cemetary, Inc.*, 349 U.S. 70, 74 (1955).

A dismissal herein, without more, would leave outstanding the injunction below. *Cf. Taylor* v. *McElroy*, 360 U.S. 709 (1959); *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950); *United States* v. *Anchor Coal Co.*, 279 U.S. 812 (1929). Respondent acknowledges petitioners' interest in terminating that injunction, and has no objection to a dismissal coupled with a vacating of the judgment of the District Court of

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[2] In view of the submission of this memorandum, respondent takes no position with respect to petitioners' December 27, 1963 "Motion To Advance Argument." It is noted, however, that the case (No. 88) which petitioners wish to have argued with this one involves a labor union and a secondary boycott question; no labor question exists in this case.

Appeal of Florida, Second District. *Riley* v. *International Brotherhood of Teamsters,* 336 U.S. 930 (1949).

WHEREFORE, in light of the foregoing considerations, respondent suggests that the issue which petitioners seek to have resolved is moot and that the case should be dismissed on that ground.

Respectfully submitted.

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